

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROBERT CVAROVSKY,)	CASE NO. 1:09 CV 2797
)	
Plaintiff,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
THE VILLAGE OF NEWBURGH HEIGHTS, et al.,)	
)	
Defendant.)	<u>MEMORANDUM OPINION</u>

This matter is before the Court on the Motion to Dismiss filed by Defendant Robert Schippling. (Docket #5.) Mr. Schippling moves the Court to dismiss him as a party defendant from the case, pursuant to Fed. R. Civ. P. 17(a)(1) and 21, asserting that he has only been sued in his official capacity and the real party in interest is Defendant Village of Newburgh Heights.

Discussion

Rule 17(a) of the Federal Rules of Civil Procedure provides that an action must be prosecuted in the name of the real party in interest. In this case, Defendant Robert Schippling has only been sued in his official capacity. Official capacity claims are treated as claims against the entity of which an officer is an agent. See *Kentucky v. Graham*, 473 U.S. 159, 165 (1985).

The Court has thoroughly reviewed the Complaint filed in this case, as well as the Motion to Dismiss filed by Mr. Schippling and the opposition filed by Mr. Cvarovsky. Mr. Cvarovsky alleges that his employment as the Village of Newburgh Heights Police Chief was

wrongfully terminated by a motion of Council. Mr. Schippling is named only in his official capacity as “Counsel [sic] Person,” not “Personally,” as are the other members of Council. Thus, the real party in interest is the Village of Newburgh Heights. Accordingly, the Court finds dismissal of Mr. Schippling as a defendant in this case to be appropriate.

Conclusion

Based on the foregoing, the Motion to Dismiss filed by Defendant Robert Schippling (Docket #5) is hereby GRANTED.

IT IS SO ORDERED.

s/Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: March 31, 2010